IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1825 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SANJAY MULJI SOLANKI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 1825 of 2001

MS KRISHNA U MISHRA for Petitioner No. 1

MR HL JANI ASSTT GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 23/07/2001

ORAL JUDGEMENT

Heard Ms.K.U.Mishra, learned advocate appearing on behalf of the petitioner and Mr.H.L.Jani, learned AGP appearing on behalf of the respondents.

#. In the present petition, the petitioner has

challenged the order of detention dated 1st November, 2000 which actually effected on 11th December, 2000 under Article 226 of the Constitution of India. The order of detention has been passed by the Police Commissioner of Rajkot City under Section 3[1] of the PASA Act. The petitioner has been detained in District Jail Surat as Class-II detenu. The petitioner has been considered as the dangerous person as defined under Section 2[c] of the PASA Act. Looking to the grounds of detention, in all four offences are registered against the present petitioner under the provisions of IPC. The last offence has been registered on 29th August, 2000. The statement of secret witnesses were recorded from which two unregistered offences noted on date 13th August, 2000 and 27th May, 2000 by the detaining authority. The statement of secret witnesses have been recorded on 27th October, 2000 and same has been verified by the detaining authority on 29th October, 2000. The respondents have not filed any reply to the present petition.

#. Learned advocate Ms.K.U.Mishra, appearing on behalf of the petitioner though has raised contentions challenging the detention order but according to her submission, one contention is enough to vitiate the order of detention. She submitted that the order of detention is dated 1st November, 2000 which has been actually effected on 11th December, 2000. Looking to the last offence registered against the present petitioner dated 29th August, 2000, there was delay of more than two months in passing the detention order and during the intervening period in between there was no registered or unregistered offence alleged to have been committed by the petitioner. Such contention has been specifically raised by the petitioner in para-11 p.8 of the petition. She also relied upon decision of this Court reported in 1997 [1] GLH 381.

#. Learned AGP Mr.H.L.Jani appearing on behalf of the respondents has submitted that looking the offence registered as well as unregistered aginst the present petitioner, the detaining authority has rightly passed the detention order. He also submitted that looking to the facts and circumstances as well as material on record, there were compelling circumstances with the detaining authority to pass the detention order, otherwise the activities which were carried out at the material time by the petitioner, would have certainly adversely affected the public order. Therefore, there was no option with the detaining authority except to pass the detention order against the present petitioner. The order of detention is legal and valid and therefore no

interference is required by this Court.

#. I have considered respective submission of learned advocates of the parties at length. The facts which are on record are not disputed between the parties. It is also necessary to note that looking to the grounds of detention, last offence registered against the present petitioner is dated 29th August, 2000. Two unregistered offence are also noted on 13th August, 2000 and 27th may, 2000 and except this, there is no offence alleged to have committed by the petitioner. Therefore, for the intervening period, there is no offence or any activities as suggested by the detaining authority have adverly affected the public order and therefore there was no immediate proximate reason to pass the detention order after period of two months. If, according to the contention of the respondents, there were compelling circumstances available with the detaining authority, then the detaining authority ought to have been passed the detention order immediately without waiting for such longer period as has been waited in the instant case. But in the present case, the detaining authority has waited sufficiently without any justification. It is also necessary to note that looking to the last date of offence dated 29th August, 2001, the statement of secret witnesses wherein, two unregistered offence dated 13th August, 2000 and 27th May, 2000 are noted by the detaining authority and statement of secret witnesses recorded on 27th October, 2000 and same are verified on 29th October, 2000, therefore, obviously there was delay even in recording the statement of secret witnesses and verification by the detaining authority. Admittedly, there was delay of about two months in recording the statements by the concerned Inspector. After last offence registered against the present petitioner, in other words, the detaining authority has waited sufficiently and all of sudden, without having immediate nexus and proximate reason, to passe the detention order, has passed the detention order in arbitrary manner without considering immediate or recent incident which was not taken place for the intervening period from 29th August, 2000 upto 1st November, 2000. The contention of delay in passing the detention order from the last date of registered offence has been specifically raised in para-11 pg.8 but no reply has been filed by the detaining authority or the respondents. In absence of the reply of the detaining authority, delay remained unexplained that why the order of detention has been passed after period of two months from the date of last registered offence dated 29th August, 2000. Therefore, view taken by this Court in reported case 1997 [1] GLH p.381, the relevant

observations made in para-21 are referred as under :-

"21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993 [2] Suppli. SCC 61."

#. In view of observations made by this Court and looking to the undisputed facts which are on record that the detaining authority has passed the detention order after period of two months from the date of last registered offence, which remained unexplained as respondents have not filed any affidavit in reply and therefore according to my opinion, the order of detention is required to be set aside.

#. In the result, the present petition is allowed. The order of detention dated 1st November, 2000 which has been actually effected on 11th December, 2000 passed by the Police Commissioner, Rajkot City is hereby quashed and set aside. The present petitioner - detenu - Sanjay Mulji Solanki who has been detained at Surat District Jail is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute with no order as to costs.

Date : 23-7-2001 [H.K.Rathod, J.]

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